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**AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

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October 26, 1998

DEPT. OF TRANSPORTATION
 DOCKET SECTION
 98OCT 27 AM 9:08

U.S. Department of Transportation Dockets
 Room Plaza 401
 400 Seventh St., S.W.
 Washington, DC 20590.

FAA-98-4458-6

Re: FAA Docket No. 293 18; Notice No. 98-1 2; Prohibition on the Transportation of **Devices**
 Designed as Chemical Oxygen Generators as Cargo **in Aircraft**

Ladies and Gentlemen:

The Air Line Pilots Association (**ALPA**), representing the safety interests of 50,000 professional airline pilots flying for 50 airlines in the United States and Canada, has reviewed the referenced notice of proposed rulemaking that proposes to ban, in certain domestic operations, the transportation of devices designed to chemically generate oxygen, including devices that have **been** discharged and newly **manufactured devices** that have not yet been charged for the generation of oxygen, with limited exceptions.

We understand this proposal was prompted by several accidents and incidents **that** have involved chemical oxygen generators. These devices could, if inadvertently transported when charged, initiate or provide a secondary source of oxygen to fuel a **fire**, and that the actions specified are intended to enhance aviation safety **by** reducing the risk of human error in recognizing whether such a device is **charged** or has been discharged.

While **ALPA** applauds the Federal Aviation Administration (FAA) in recognizing the inherent danger in transporting devices capable of producing both oxygen and high temperatures, we are concerned that the FAA is pursuing, on its own, rulemaking that directly involves possible areas of jurisdiction and regulatory control that is already currently under rulemaking consideration (**HM-224a, HM-224a**, supplemental) by the Research and Special Programs Administration (RSPA), DOT. The Federal Aviation Regulation's (FAR) clearly give this responsibility to RSPA. The comment period of these Dockets has closed and **the** we are awaiting the issuance of a **final** rule in these matters.

There are many problems associated with this administrative action. Below is a list of specific points that we believe need **to** be reviewed, reconsidered and then expounded upon in text before the FAA acts by issuing a **final** rule. (Note: They are not listed in order of priority.)

- **ONE SET OF REGULATIONS:** Aside from the safety implications the state of confusion generates is the issue of one set of regulations. **ALPA** has consistently affirmed **and** continues to maintain that a single set of regulations concerning the transportation of dangerous goods by air is essential. We are very aware and supportive of the **RSPA's** interaction with the ICAO *Technical Instructions* and domestic rulemaking Title 49 of the **Code of Federal Regulations (49CFR)** that has been systematically aligning the recommendations of the United Nations Committee of Experts (UNCOE), *Recommendations on the Transport of Dangerous Goods, Tenth revised edition*.

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By this action, we believe the FAA is attempting to develop and implement dangerous goods regulations on their own that are outside the recognized regulatory agency (RSPA) responsible for the safe movement of dangerous goods while in transportation on **all** modes. While we do not minimize the potential hazards of a charged oxygen canister that self initiates or it's impact if involved in a fire, this administrative method is contrary to the orderly regulatory process.

In the preamble, the FAA indicates that they do not want to have an operator consult two different sets **of** regulations to determine the correctness **of** the shipment being **offered and** carried **but** that is precisely the result with this **rulemaking**. By changing the definition **of** what constitutes a device (**§91.20(d)(3); § 121.540(d)(3)**, et al) the FAA is creating the second set of regulations to check **and** therefore has **introduced** yet another level of confusion for the manufacturer, shipper **and carrier** wanting to move these devices. **Which set** of regulations should the industry **check**? Training and certification of qualified personnel (including the pilots) for all **modes**, including air, involve the 49CFR and the ICAO *Technical Instructions* which contain the dangerous **goods domestic and** international regulations, respectively. It is unrealistic for the aviation industry to deviate from the well established **and** developed high standards currently in place. For **many years**, the RSPA has been diligently and successfully working in all modes, especially in the air mode, to bring into harmonization the dangerous goods regulations in the United States with those from the UNCOE and the international community. This action is a departure from that goal and is not acceptable.

- **DEFINITION OF A DEVICE: ALPA** is opposed to **the FAA** changing RSPA's definition by the inclusion of newly manufactured and spent devices in the definition of **Chemical Oxygen** Generators. These devices **do** not contain the chemicals required to react exothermically, and as such do not meet RSPA's definition of an oxygen generator (chemical) in 61 FR 26418. Because the newly manufactured and spent **devices** do not contain the required chemical precursors, they are not inherently dangerous. The only reason to regulate the transport of these materials is based **on the** possibility that a fully charged generator could be mistaken for an empty one. We feel this sets a dangerous precedent in the transportation of cargo; regulation by appearance and not by potential danger to the occupants of the aircraft. Using this guideline, empty oxygen bottles and clear liquids would need to be regulated based on the potential to confuse these packagings **and** substances for actual dangerous **goods**. **We do** not understand how a newly manufactured vessel being shipped from the vessel manufacturer to the company assembling the oxygen generator would be any different than the proposed exception **of** a Special Provision 60 holder from the **ban**? Is the problem the individual movement of a canister or vessel? If so, provide for the appropriate packaging regulations for the potential danger, We believe this would be accomplished by the RSPA in 49CFR.
- **ACCIDENTS / INCIDENTS:** In the NPRM, the FAA cites **seven** instances where chemical oxygen generators either caused a fire on board an aircraft, or were discovered improperly packaged for shipment. With the exception of the fire caused by **a** flight attendant covering an activated generator with a linen, all of these instances are examples of violations of the current regulations. Further regulation is unlikely to solve this problem. In all likelihood, the oxygen generators would still be

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labeled as "aircraft parts", and a seat containing an oxygen generator would still be shipped as COMAT if this **NPRM** becomes law. The solution to this significant **problem** is better education and training, not the prohibition of devices that **do not** meet the definition of a dangerous good.

- **ACCOUNTABILITY: ALPA** is unsettled with respect to the proposed wording of Part 12.1540 (a) "...no person may carry, or act in any manner that could result in the carriage of, a device designed as a chemical oxygen generator." Our concern is that the **FAA's** burden of ensuring that the cargo is free of oxygen generators would fall solely on the Pilot in Command, rather than the shipper offering the package for transportation or the **air carrier** (acceptance and loading personnel). The pilot-in-command is the final check in the checks and balances of the system to determine that the shipments described in the notice to the Pilot in Command and that have been prepared and checked by the previously mentioned personnel are proper to be placed (loading, segregation, etc.) on the aircraft.
- **ACCEPTABILITY TO CARGO:** The FAA indicates that crew members would **not** be able to **quickly** remove a device because of size, weight, or location. This is an incorrect perception. **Although** specifically referenced in the regulatory text the **FAA** and other regulatory agencies **should** fully understand that flight deck crew members (pilots) are, for all intensive **purposes**, not going to enter a compartment to **fight** a fire. This is especially true for two crew cockpits. **Our definition of** "entering" means crossing the threshold of the door at the entrance to the compartment as opposed to 'going into' that area. We have maintained this position for many years and it was clearly stipulated and accepted by flight deck crew member associations, aircraft manufacturers and aircraft operators in the development **of** the Class B Cargo Compartment Certification recommendations made by the Aviation **Rulemaking** Advisory Committee (**ARAC**) as set forth in tasking by the FAA following the South African Airways Boeing 747 accident in 1988. The explanation of what constitutes "entering" was developed by that ARAC group and **ALPA** agrees. This ARAC work, consisting of a completed draft NPRM and Advisory Circular, has been sitting at the FAA's certification division in Seattle, **WA** for nearly three years and has not been issued in a public docket. This has resulted in **positive** safety changes not being **acted** upon in a timely manner. Nonetheless, our position on "entering" a cargo compartment on fire remains unchanged.
- **FIRE INTENSITY:** To the question of secondary sources of the fire triangle: Other **HazMat** in the **cargo compartment can be a secondary source to fuel a fire. Flammable** liquids as well as other Classes/Divisions of dangerous goods can cause similar reactions. It should be understood that not only oxygen could cause the intensification of a fire to a fatal level.
- **REGULATION OF PERSONAL OXYGEN GENERATORS:** **If** this proposal is a total ban of oxygen generators, as indicated, there was no reference to **how** the issue of personal oxygen generators (**POG**) excepted by 49 CFR **§175.10(24)** would be handled. ♦ appears they are included but not specifically referenced. What accommodation are being made or will the **FAA** request RSPA to cancel **§175.10(24)** prior to RSPA issuing the their own **final rule** which **will remove the POGs** from the exceptions list, making them a part of the regulations, therefore banning them. Manufacturers of these devices would then place warnings in their owner material pointing out the aviation ban.

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Although we have concerns with parts of the proposed rule, **ALPA** is supportive and **agrees** with the basic intent regarding the following items:

- Extending this NPRM to **the** non-transport category aircraft with cargo compartments that share similar design features to those stipulated for Part 25 aircraft. This would include the Part 23, commuter category **and** Part 23, SFAR 41 certificated aircraft **being used by operators**.
- That the introduction of additional oxygen, from **any source**, into a Class C compartment will render the limited quantity of **halon** ineffective.
- That these devices (RSPA definition) be banned from Class D cargo compartments on **all** transport or non-transport, cargo or passenger, large or small aircraft.

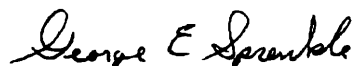
Summary/Recommendations:

ALPA recommends that the FAA withdraw this NPRM and work in a coordinated effort with the RSPA to **expedite** the **issuance** of a final rule to **the** current outstanding proposal, specifically HM-224a and **HM-224a**, supplemental. Doing so will provide a single source of regulatory administration and **enforcement** of dangerous goods for both the FAA and **RSPA and assure that oxygen generator** ban, including the currently excepted personal oxygen generators, is an effective and viable one.

ALPA recommends that the FAA **not** change the definition of **the device from** that set **forth by the** RSPA. Although there is always the human factor, we believe that packaging criteria for newly manufactured vessels that will be assembled into oxygen generators may be **necessary** to meet **the FAA's concerns so that** vessels and canisters from individuals are not in the system.

The continued safe transportation of people is **essential**. The FAA **needs** to reconsider this action and **work** cooperatively with the RSPA to produce regulations with the highest degree of care that protect the traveling public, including the providers, in the air transportation industry. Thank you for the opportunity to comment.

Sincerely,



Captain George E. **Sprenkle**, Chairman
Dangerous Goods Committee



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